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INTERNATIONAL SECURITIES EXCHANGE

SECURITIES AND EXCHANGE COMMISSION  
SEP 16 2003  
DIVISION OF MARKET REGULATION

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September 16, 2003

Ms. Annette Nazareth  
Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street N.W.  
Washington, DC 20549

RECEIVED

4-469

**Re: Exclusive Listing of Index Products**

Dear Annette:

The International Securities Exchange, Inc., adds its support to the recent letter by the Pacific Exchange, Inc. ("PCX")<sup>1</sup> seeking a temporary moratorium on exclusive licensing arrangements for index options products. We believe that it is imperative for the Commission to put a "hold" on any additional exclusive licenses for index options products until the Commission considers the issues raised in our recent petition requesting that the Commission prohibit these arrangements.<sup>1</sup> Our concerns recently were heightened when the Philadelphia Stock Exchange ("Phlx") and The Nasdaq Stock Market, Inc. ("NASDAQ") announced an exclusive licensing arrangement for options on the NASDAQ Composite Index.<sup>3</sup>

We filed the Petition to address what we believe is the last significant barrier to true competition in the listed options market. As you are aware, the most actively-traded index options currently are subject to exclusive license arrangements. As the Petition details, these arrangements preclude competition and impose real and significant costs on investors. We have asked the Commission to publish for comment a rule that would prohibit these types of arrangements in the future, with a specified sunset date for existing exclusive license arrangements. Based on our discussions with you and others on the Commission staff, we are hopeful that the Commission will soon be considering the Petition.

As the Commission considers the Petition, we share the PCX's concern that other exchanges may seek to enter into exclusive license arrangements prior to Commission action to outlaw the practice. Indeed, since the PCX filed its letter with you, the Phlx and NASDAQ announced their proposed exclusive arrangement. Obviously, permitting exchanges to enter into any additional exclusive licenses would exacerbate the current competitive problems and customer costs associated with these licenses. We are concerned that other exchanges may

<sup>1</sup> Letter dated September 2, 2003, from Philip D DeFeo, Chairman and Chief Executive Officer, PCX, to Annette Nazareth, Director, Division of Market Regulation

<sup>2</sup> Letter dated November 1, 2002 from David Krell, President and Chief Executive Officer, ISE, to Jonathan G Katz, Secretary, Commission ("Petition")

<sup>3</sup> Press release entitled "NASDAQ and the Philadelphia Stock Exchange Partner to Offer Options on the NASDAQ Composite Index," September 4, 2003

seek to follow the Phlx/NASDAQ lead and establish anticompetitive exclusive arrangements before Commission action on the Petition.

Accordingly, we respectively request that the Commission impose a temporary moratorium on any additional **exclusive** license arrangements for index option products. The Commission could adopt this concurrently with the publication of the Petition for comment or as stand-alone **rulemaking**. In addition, if the Commission receives a rule filing from an options exchange seeking approval to trade index options pursuant to an exclusive license, we request ~~that~~ the Commission publish **such** filing for public comment prior to such filing becoming effective. That is, in ~~the~~ current competitive **climate** we believe it **would** be inappropriate for any exchange to file an exclusive index option either to be effective on filing or for accelerated Commission approval.

We remain committed to **working** with the Commission and the staff to bring to investors the **benefits of** increased competition in the index options markets. If you have any questions on the ISE **Petition** or on this letter, please do not hesitate to contact me.

Sincerely,



David Krell

cc: The Honorable William H. Donaldson  
The Honorable Paul S. Atkins  
The Honorable **Roel** S. Campos  
The Honorable Cynthia A. Glassman  
The Honorable Harvey J. **Goldschmid**